

UNITED STATES DISTRICT COURT  
NORTHERN OHIO  
EASTERN DIVISION

LONNIE THOMPSON,

Plaintiff,

VS

HENSLEY, et. al.,

Defendants.

FILED  
NOV 09 2023  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

) CASE NO. 1:23-CV-01656

)

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) JUDGE P. BARKER

)

) MAGISTRATE JUDGE GRIMES

)

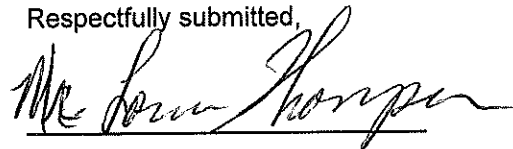
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REQUEST FOR ORDER  
CONTROL NUMBER

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Now comes, the Plaintiff, Lonnie Thompson, pro-se in the above case and request that this Honorable Court issue and order to their Clerk of Courts to obtain a "CONTROL NUMBER" from the Correctional Institution where the Plaintiff is confined, before sending the Plaintiff, "Legal Mail". The reasons are set forth in the attached Memorandum In Support.

Respectfully submitted,



Mr. Lonnie Thompson, # 640-614

Richland Correctional Institution

1001 Olivesburg Road

P.O. Box 8701

Mansfield, OH 44901

### **MEMORANDUM IN SUPPORT**

Effective February 01, 2022, the Ohio Department of Rehabilitation and Correction, hereafter known as ODRC, changed its Legal Mail policy. (See ODRC Inmate Mail and Printed Materials Policies, Incarcerated Population Legal Mail (75-MAL-03). Under the new legal mail process, senders must register and use Control Numbers on mail sent to incarcerated persons. ODRC warns that "mail postmarked on or after April 01, 2022, without a Control Number will be processed as regular mail, i.e. opened, copied, and delivered to the addressee." (See, ODRC New Legal Process – Registration and Control Number Access, <https://www.drc.ohio.gov/Organization/Legal-Mail> (last visited February 15, 2023)). In Ohio, mail from the court is "legal mail" that may be opened only in the presence of the addressee when marked with a valid Control Number. Ohio Admin. Code § 5120-9-17 (B)(2) ('Legal mail' is mail addressed to an inmate clearly bearing the return address of an attorney-at-law, a public service law office, a law school legal clinic, court of law, or the correctional institution inspection committee that is marked with a valid Control Number provided by the department. It may be opened and inspected for contraband only in the presence of the inmate-addressee'). ODRC does not include mail from the court as legal mail requiring a Control Number:

- ODRC has determined that mail addressed to incarcerated persons received from state and federal courts, clerk of court and court personnel is not required to have a Control number to be processed.
- Instead, all mail received from courts, clerks and court personnel is presumed to be ordinary mail and not legal mail. Such mail will be opened, the contents copied and provided to the addressee.

See ODRC Clerks of Court and other Court Personnel,

<https://www.drc.ohio.gov/Organization/Legal-Services/Legal-Mail/Court-Personnel> (last visited February 15, 2023).

In *Sallier v. Brooks*, the Sixth Circuit held that "mail from a court constitutes 'legal mail' and cannot be opened outside the presence of a prisoner who has specifically requested otherwise". 343 F.3d 868, 877 (6<sup>th</sup> Cir. 2002); *Price v. Stephenson*, No. 18-1702, 2019 WL 2603540, at \*2 (6<sup>th</sup> Cir. Apr. 26, 2019) ("mail from a court... is considered legal mail that cannot be opened outside of the presence of the prisoner."). In reaching this conclusion, the Sallier Court "imagined a situation in which a court corresponds with a prisoner before filing the prisoner's complaint because some administrative requirement, such as submitting an in forma pauperis affidavit, paying the filing fee, or signing

the complaint, has not been met. In that situation, the complaint is not yet public record, and prison officials have no legitimate interest in reading the correspondence before it is." Id.

The Sixth Circuit Court has approved an opt-in system in which prison officials may open any mail outside a prisoner's presence unless the prisoner has affirmatively requested that mail sent by a court or counsel be opened only in the prisoner's presence. Knop v. Johnson, 977 F.2d 996, 1012 (6<sup>th</sup> Cir. 1992), cert denied, 507 U.S. 973 (1993).

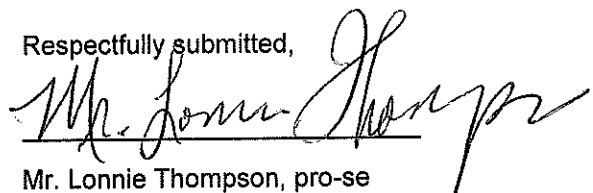
However, the Court should have concerns about the timeliness in which a prisoner receives this Court's mailings as well as the completeness of those mailings after they have been processed at ODRC as "regular mail". (See ECF No. 45 at 4) (discussing the length of time it takes to receive regular mail and that pages are missing from the documents he receives). Since this prisoner has specifically requested that his mail from this Court be opened in his presence. This prisoner requests that this Court order the Clerk of Court to use ODRC legal mail Control Numbers on its mailings to this prisoner to alert the Institutional Mail Room that this prisoner has opted to have the Court's mail opened in his presence.

Furthermore, the current procedure at the Richland Correctional Institution, is that all mail from Courts, Lawyers, Law Schools, or Correctional Institutional Inspection Committee, that fail to have a control number is treated as regular mail and sent to the prisoner through the regular mail system, which is photo copied. This procedure can result in the prisoner's legal mail being lost, misplaced, mixed up with other prisoner's mail, not photo copied completely, or cause a delay to where a prisoner cannot meet the Courts' deadline for filing documents or a response to motions or answers from opposing parties.

### CONCLUSION

Therefore, this prisoner request that this Court Order its' Clerk of Courts to request a Control Number from the ODRC before this Courts' Clerk sends "Legal Mail" to this prisoner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mr. Lonnie Thompson", is written over a horizontal line.

Mr. Lonnie Thompson, pro-se

# 640-614